common sense, that no act of the citizen can be unlawful which the law permits. A statute which would attempt to declare a different rule would not only be a legal solecism, but would commit an act of *felo de se*. See *Railroad Co.* v. *Dey*, (Iowa,) 48 N. W. Rep. 98; *Railway Co.* v. *Dey*, 35 Fed. Rep. 873-876; *State* v. *Fremont, etc., R. Co.*, (Neb.) 35 N. W. Rep. 118, and 36 N. W. Rep. 305; *Sorrell* v. *Railroad Co.*, 75 Ga. 509; *Chicago, B. & Q. R. Co.* v. *People*, 77 Ill. 443.

A right of action in favor of the shipper, it may be conceded, existed at common law for extortionate charges, but the statute has superseded the common-law remedy. *Young* v. *Railroad Co., infra;* Ror. R. R. 1373, and notes. The plaintiff having no ground of action for an unreasonable and unjust charge against the carrier, except where the carrier has transcended the limit prescribed by the state's agents, the petition should allege the facts necessary to bring the case within the operation of the statute. *Kennayde* v. *Railroad Co.*, 45 Mo. 258; *King* v. *Dickenson*, 1 Saund. 135; *Bayard* v. *Smith*, 17 Wend. 88. This is not done, and the demurrer is sustained.

It appears on the face of the petition that as to the first 45 counts the causes of action arose more than three years next before the institution of the suit. Under the statute these causes of action are barred. This may be taken advantage of by demurrer. *Henoch* v. *Chaney*, 61 Mo. 129; *Bliss* v. *Prichard*, 67 Mo. 181; section 3231, Rev. St. Mo. 1879; *Young* v. *Railroad Co.*, 33 Mo. App. 509.

MACKEY *v.* HOLMES.

(Circuit Court, W. D. Missouri, W. D. November 7, 1892.)

1. RETROSPECTIVE LAWS—USURY—PENALTIES.

   Laws Mo. 1891, p. 170, § 2, provides that when the validity of any pledge or mortgage of personal property to secure indebtedness is drawn in question proof that the party holding the lien has received or exacted usury shall render such lien invalid. *Held*, that this merely prescribed an additional penalty for an act which was before unlawful, and therefore it invalidated a chattel mortgage, made before it went into effect, when usury was received on the indebtedness afterwards, and that such a construction was not giving the statute a retroactive operation.

2. USURY—CHATTEL MORTGAGES—REPLEVIN.

   In an action of replevin to recover personal property held under a mortgage, which has been invalidated under said act by the exaction of usury, the plaintiff can only recover the specific chattel, or its equivalent in money, where he is in a position to so elect; and no judgment in *assumpsit* or for the mortgage debt can be rendered therein, nor can any affirmative relief be granted to defendant. *Hamilton* v. *Clark*, 25 Mo. App. 428, followed.

At Law. Action of replevin, brought by Cornelia Mackey against Moses M. Holmes to recover personal property held under a chattel mortgage. On motions to strike out the two counts of the answer. Denied as to the first count, and sustained as to the second.

Scarrit & Scarrit, for plaintiff.

Brumback & Brumback and *A. F. Evans*, for defendant.

PHILIPS, District Judge. 1. Section 1 of the act of the Missouri legislature adopted April 21, 1891, (Laws Mo. 1891, p. 170,) declares that—

"Usury may be pleaded as a defense in civil actions in the courts of this state, and, upon proof that usurious interest has been paid, the same, in excess of the legal rate of interest, shall be deemed payment, shall be credited upon the principal debt, and all costs of the action shall be taxed against the party guilty of exacting usurious interest, who shall in no case recover judgment for more than the amount due upon the principal debt, with legal interest, after deducting therefrom all payments of usurious interest made by debtor, whether paid as commissions, or brokerage, or as payment upon the principal, or as interest on said indebtedness."

Section 2 declares that—

"In actions for the enforcement of liens upon personal property pledged or mortgaged to secure indebtedness, or to maintain or secure possession of property so pledged or mortgaged, or in any other case when the validity of such lien is drawn in question, proof upon the trial that the party holding or claiming to hold any such lien has received or exacted usurious interest for such indebtedness shall render any mortgage or pledge of personal property, or any lien whatsoever thereon, given to secure such indebtedness, invalid and illegal."

This act went into effect on the 22d day of June 1891.

The first count in the answer, while it discloses the fact that the chattel mortgage under which the plaintiff claims the right of possession to the property in question was executed prior to the said 22d day of June, 1891, distinctly alleges that the notes executed by the defendant for usurious interest were paid by defendant, and the money was received by plaintiff, after the 22d day of June 1891. We recognize the fact that the organic law of the state (section 15, art. 2, Const. 1875) prohibits any law retrospective in its operation; and we recognize the further rule of law that all such legislative acts are presumed to be prospective in their operation. But the plaintiff never had any lawful right or claim to this usurious interest thus exacted. It was interdicted at the time the contract was made, and any defendant could plead such usury in defense to any action predicated of such contract. Rev. St. 1879, § 2727, and Rev. St. 1889, § 5976. The difference consists merely in the penalty prescribed for the misdeed. Therefore, the plaintiff never had any vested right in this usury. It was unlawful, and contrary to the policy of the state. And while the legislature could by no *ex post facto* or retrospective law touch or affect the antecedent contract, it was perfectly competent for it to declare, as it did in said section 2 of the act of April 21, 1891, that, if any usurer, after this law shall take effect, shall exact usurious interest for a debt secured by a chattel mortgage, he shall lose the benefit and protection of such mortgage. It is but a new penalty attaching to an act declared beforehand to be unlawful, and for repeating the offense after the new enactment. If it should be held that the act of 1891 does not apply to this transaction and the unlawful interest exacted after its passage, it would result that no penalty whatever could attach to the usurious contract, and that all defense whatsoever was lost to the defendant when such contract should be drawn in ques-

tion; for by the last section of the act of 1891 said section 5976 of the General Statutes of 1889 is expressly repealed. Except when the language of the legislature is such as to admit of no two meanings as to its import, it is the duty of the courts to be constrained by the interpretation which will plainly effectuate the legislative intent, and preserve the known public policy of the state. The motion to strike out the first count of the answer is therefore overruled.

2. The second count of the answer, it seems to me, is quite unnecessary. It pleads matters evidently based on the first section of said act of 1891. I take it that this section applies only to the instance where suit is brought to recover on the note or contract vitiated by usury. The action here is replevin, to recover the possession of the personal property mentioned in the mortgage given to secure a debt affected by usury. The plaintiff in this action can only recover the specific chattel, or its equivalent in money, where the plaintiff is in position to so elect. No judgment in *assumpsit* or for the mortgage debt can be rendered therein. *Hamilton* v. *Clark*, 25 Mo. App. 428. So, if the defense interposed by the defendant in the first count of the answer be sustained by the proofs, it will put an end to this action. Neither the statute in question, nor any known rule of procedure, entitles the defendant to any relief over against the actor in such event. The motion to strike out the second count of the answer is sustained.

HARKINS *v.* PULLMAN PALACE CAR CO.

(*Circuit Court, D. Delaware.* November 14, 1892.)

1. DEATH BY WRONGFUL ACT—EXCESSIVE DAMAGES.
   In an action against a railroad company to recover damages for the death of plaintiff's husband, an ordinary laborer, 30 years of age, earning about $400 a year, a verdict of $7,000 is not so excessive and exorbitant as to induce the belief that the jury were influenced by partiality or prejudice, and a new trial should be refused.

2. SAME—RULE OF DAMAGES.
   In an action by a wife for causing the death of her husband, a day laborer, the maximum recovery is not necessarily limited to a sum which would produce an annual income equal to one half his annual earnings.

At Law. Action by Maggie Harkins against the Pullman Palace Car Company to recover damages for the death of her husband. Verdict for plaintiff for $7,000. On motion for new trial. Refused.

George H. Bates, for the motion.

Levi C. Bird, opposed.

WALES, District Judge. This was an action to recover damages for the death of plaintiff's husband, caused, it was alleged, by the negligence of the defendant. A trial was had at the present term, and the